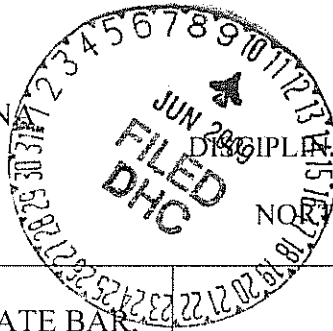


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK H. BADGETT, Attorney,

Defendant

AMENDED
COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Mark H. Badgett (hereafter "Defendant" or "Badgett"), was admitted to the North Carolina State Bar in 1984 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Defendant was a district court judge in the 17-B Judicial District of North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and incorporated as if fully set forth herein.

5. Prior to his election as a district court judge in District 17-B, Badgett maintained a law office on Dalton Street in King, North Carolina.

6. After his election, Badgett arranged to lease the Dalton Street building to attorney Ernest Clarke Dummit. Dummit agreed to maintain Badgett's client files in the Dalton Street building.

7. After Badgett assumed the bench, Dummit represented clients before Badgett on multiple occasions.

8. Badgett did not disclose to opposing counsel his business relationship with Dummit.

9. Employees of the District Attorney's office complained about what they perceived to be favorable treatment of Dummit by Badgett.

10. In December 2005, the North Carolina Judicial Standards Commission (hereafter "the Commission") commenced an investigation of the events set forth paragraphs 5 through 9 above (hereafter "Judicial Standards Proceeding I").

11. In January 2006, Badgett was advised in writing by the Executive Director of the Commission that his business relationship with Dummit was potentially grounds for disqualification from matters in which Dummit was involved.

12. At Badgett's direction, Dummit thereafter prepared a document entitled "In re Remittal of Disqualification" (hereafter "the Remittal").

13. The Remittal prepared by Dummit stated: "Now come the undersigned, pursuant to an opinion rendered by the Judicial Standards Commission of the State of North Carolina in accordance with Canon Three of the Judicial Code of Ethics, finding the relationship of landlord-tenant which exists between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County, and hereby provide Public Notice that the relationship is insubstantial and immaterial pursuant to the opinion rendered by the Judicial Standards Commission, and do hereby remit any impuned [sic] disqualification pursuant to Canon Three of the Judicial Code of Ethics."

14. The representation in the Remittal that the Commission had rendered an opinion finding the relationship of landlord-tenant between Badgett and Dummit to be "both insubstantial and immaterial to the administration of justice" was false.

15. Badgett and Dummit signed the Remittal.

16. Dummit sent the Remittal to District Attorney Ricky Bowman for his signature.

17. Bowman declined to sign the Remittal.

18. Badgett contacted Bowman on more than one occasion in an effort to obtain his signature on the Remittal.

19. After District Attorney Bowman declined to sign the Remittal, Badgett stated to Bowman that the Commission's investigation into the matter had concluded.

20. Badgett also stated to Bowman that Paul Ross had indicated Bowman needed to sign the Remittal.

21. Paul Ross is the Executive Director of the Commission.

22. Badgett's statements to Bowman set forth in paragraphs 19 and 20 above were false.

23. During a subsequent hearing in Judicial Standards Proceeding I, Badgett testified under oath that he had not made the statements to Bowman set forth in paragraphs 19 and 20.

24. Badgett's testimony that he had not made the statements to Bowman set forth in paragraphs 19 and 20 was false.

25. During the hearing in Judicial Standards Proceeding I, Badgett also testified under oath that he had not directed Dummit to prepare the Remittal.

26. Badgett's testimony that he had not directed Dummit to prepare the Remittal was false.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By directing Dummit to prepare the Remittal containing false statements, Badgett knowingly assisted or induced Dummit to violate the Rules of Professional Conduct and engaged in misconduct through the acts of another in violation of Rule 8.4(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (b) By knowingly making false representations to the District Attorney about the Commission's investigation and statements by Paul Ross, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- (c) By falsely testifying under oath at the hearing in Judicial Standards Proceeding I, Badgett made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1), committed a criminal act—to wit: perjury, in violation of N.C. Gen. Stat. § 14-209—that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(c), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

SECOND CLAIM FOR RELIEF

27. Paragraphs 1 through 26 are re-alleged and incorporated as if fully set forth herein.

28. On 24 February 2005, Badgett presided over a hearing in *Carreon v. Carreon*, 05 CVD 164, a case in which the plaintiff sought a domestic violence protective order against the defendant. (The events which transpired during this hearing are hereafter referred to as “the 24 February 2005 events”).

29. The plaintiff’s complaint in *Carreon* did not include a request for spousal support, and no evidence was offered at the 24 February 2005 hearing on the issue of spousal support.

30. After the plaintiff and the defendant testified, Badgett indicated that he would grant the order of protection sought by the plaintiff. Thereafter, the plaintiff stated that she had no money or mode of transportation.

31. Badgett ordered the defendant, who was *pro se*, to pay \$150.00 per week to the plaintiff in spousal support and to deliver the keys to his truck to the sheriff’s department that afternoon.

32. When the defendant attempted to object to the award of spousal support, Badgett replied that the defendant could find a way to get the money, saying “you people always find a way,” or words to that effect.

33. Badgett also remarked to the defendant “I don’t know how you treat women in Mexico, but here you don’t treat them that way.”

34. Badgett’s statements to the defendant set forth in paragraphs 32 and 33 were directed toward the defendant’s Hispanic ethnicity.

35. Badgett’s statements to the defendant set forth in paragraphs 32 and 33 were indicative of a bias against the defendant.

36. Badgett then directed a courtroom deputy to search the defendant’s wallet and turn over the cash therein to the plaintiff.

37. By awarding spousal support when none had been requested and no evidence had been taken on the issue, and by ordering the courtroom deputy to search the defendant’s wallet and turn over his money to the plaintiff, Badgett deprived the defendant of his rights without due process.

38. On 8 March 2005, the defendant in *Carreon* filed a Motion for Relief from Judgment seeking to set aside the order entered by Badgett on 24 February 2005.

39. The Motion for Relief from Judgment alleged, among other things: “When the Defendant appeared in open court on February 24, 2005, he advised the court

that he needed addition [sic] time to retain an attorney and gain legal assistance in this matter. He was allowed less than one hour to locate and retain an attorney, but could not. Upon his return to the courtroom Defendant requested that the matter be continued for that purpose. The Defendant's motion for a continuance was denied."

40. On 23 March 2005, Badgett heard the defendant's Motion for Relief from Judgment and granted the motion.

41. Badgett instructed counsel for the defendant to include in the order granting the motion a statement that, due to a language barrier, Badgett had not understood during the 24 February 2005 hearing that the defendant wanted an attorney.

42. At Badgett's instruction, counsel for the defendant in *Carreon* included the following statement in the Order Granting Rule 60 Motion: "The Defendant's language barrier caused him not to understand what the court said on February 24, 2005 and he was unable to communicate that he wanted a lawyer."

43. The statement set forth in paragraph 42 was false, as Badgett was aware on 24 February 2005 that the defendant wished to obtain an attorney.

44. Badgett signed the Order Granting Rule 60 Motion in *Carreon*, which was filed in the court record.

45. In November 2006, the Commission commenced an investigation of the 24 February 2005 events (hereafter "Judicial Standards Proceeding II").

46. After he received notice of the Commission's investigation, Badgett attempted to discuss the 24 February 2005 events with the Deputy Clerk of Court who was present during the 24 February 2005 events and with the attorney who had represented the plaintiff in *Carreon*.

47. The Deputy Clerk and the plaintiff's attorney were potential witnesses in Judicial Standards Proceeding II.

48. Badgett attempted to influence the recollection of these potential witnesses about the 24 February 2005 events.

49. When Badgett was interviewed by the State Bureau of Investigation (SBI) in connection with Judicial Standards Proceeding II, he made false statements to the Special Agent conducting the interview, including:

- a. Denying that he had instructed the courtroom deputy to search the defendant's wallet or take his money;
- b. Denying that the courtroom deputy was ever in possession of the defendant's wallet;

- c. Stating that the defendant involved in the 24 February 2005 events was known to carry a gun; and
- d. Stating that the courtroom deputy had approached the defendant because the deputy was suspicious of the defendant and was concerned for the security of others in the courtroom.

50. Badgett made the statements to the SBI agent set forth in paragraph 49 for the purpose of deceiving the SBI agent and the Commission in their investigation of the 24 February 2005 events.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of his actions as follows:

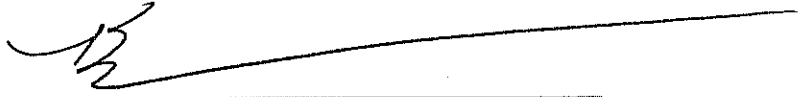
- (a) By making comments from the bench indicative of bias and directed toward the defendant's Hispanic ethnicity and by depriving the defendant of his rights without due process, Badgett engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By directing defense counsel in *Carreon* to prepare an order containing false statements and by signing that order on behalf of the court, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By attempting to influence the recollection of potential witnesses about the 24 February 2005 events, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (d) By knowingly making false statements to the SBI agent investigating Judicial Standards Proceeding II, Badgett knowingly made false statements of material fact to a third person in violation of Rule 4.1, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

WHEREFORE, Plaintiff prays that

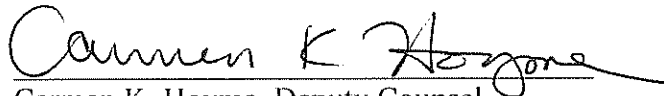
1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
2. Defendant be taxed with the costs permitted by law in connection with this proceeding; and

3. For such other and further relief as the Hearing Committee deems appropriate.

This the 10th day of June, 2009.



Katherine Jean, Counsel
State Bar #12997



Carmen K. Hoyme, Deputy Counsel
State Bar #33998

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